

LSA Document #08-764 (WPCB) (Antidegradation)

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## OFFICIAL COMMENT

### Indiana Farm Bureau/Indiana Pork Comments

These comments are submitted on behalf of Indiana Farm Bureau, Inc. and the Indiana Pork Producers Association. We appreciate the opportunity to comment on this proposed rulemaking. In addition, we thank IDEM for hosting public meetings on this rule proposal and for the efforts undertaken by staff to answer our questions and address our concerns.

While it is clear that the focus in adopting the antidegradation rule is point sources that directly discharge through pipes (and other conduits), we are concerned with how this proposed rule could impact Indiana livestock operations regulated by a federal NPDES permit. Additionally, there may be future impacts upon agricultural activities that are not currently subject to NPDES permits. Essentially, this rule proposal has raised numerous questions for agriculture but the answers do not seem to be clear. In the very least, the agricultural community is concerned that once this rule takes effect that efforts will be made to apply the rule requirements to agricultural production practices in a way that is not currently anticipated.

In the previous discussions about this proposal, the indication has been that this rule will not apply to agricultural operations because they do not discharge. However, we are concerned that the language of the rule does not clearly indicate this result. As a general proposition, livestock operations on the whole seldom discharge. Nonetheless, some are designed to discharge effluent such as non-contact cooling water. Other facilities may be subject to an accidental discharge. It is clear under EPA's requirements for a federal NPDES permit for CAFOs that livestock operations that discharge or propose to discharge will be required to obtain an NPDES permit. In addition, facilities that have had accidental discharges may also be required to obtain an NPDES permit. If the assumption is that those facilities do discharge, they would seem to be at risk for being required to make an antidegradation demonstration.

Language currently exists in rule which may lead to the conclusion that livestock operations will not be required to undergo the antidegradation demonstrations in Proposed Rule 1.3. Rule 15 states, "Compliance with this rule and all applicable requirements for an NPDES general permit under article 15 shall meet the nondegradation requirements of 327 IAC 2-1. 327 IAC 15-15-1(d). In the "Maintenance of surface water quality standards" section of Rule 1, it is stated that "No degradation of water quality shall be permitted which would interfere with or become injurious to existing and potential uses." 327 IAC 2-

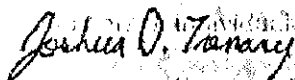
1-2(1). If, as 327 IAC 15-15-1(d) states, all CAFO general permits already meet the nondegradation standard of 327 IAC 2-1-2, is this enough to show that the CAFO general permit does not have to undergo the antidegradation review discussed in 327 IAC 2-1.3-1(c)? If so, this should be stated clearly in Proposed Rule 1.3.

Even if the above scenario was true and was stated clearly in 327 IAC 2-1.3, it is still not clear that holders of individual CAFO permits would be excluded.

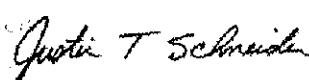
We understand that the nature of CAFO discharges do not lend themselves to antidegradation review, and that those discharges that do not meet the standard of an agricultural stormwater discharge are so minimal that in almost every case there would be very little negative impact on the waters of the state. An actual point source discharge from a CAFO is almost always accidental, so tracking the amount and frequency of such discharges is impossible. As such, there would be no way to determine when operational expansion would trigger an increase of these sporadic discharges. If Rule 1.3 is intended to apply only to "a proposed new or increased loading of a pollutant of concern to a surface water of the state," there is no way to determine when this would occur for a CAFO. 327 IAC 2-1.3-1(b). Even if a determination could be made, with no numeric standards for nutrients, successfully completing the antidegradation demonstration would be next to impossible. We understand the logic that this proposed rule does not apply to CAFOs, we merely hope the final version of Rule 1.3 will more clearly state this position.

We thank you for your consideration of our comments. Questions can be addressed to Josh Trenary at [jtrenary@inpork.org](mailto:jtrenary@inpork.org) or Justin Schneider at [jschneider@infarmbureau.org](mailto:jschneider@infarmbureau.org).

Sincerely,



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